



*Quinlan & Carroll*

Writer's Direct Dial No

312 917 8453

Affiliate  
Edward D. Heffernan  
Washington, D C

January 18, 2005

**Via FedEx and Facsimile**

Mr. Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E. Street, NW  
Washington, D.C. 20463

Re: MUR 5406

Dear Mr. Jordan:

On behalf of my client, Citizens for Hynes, I write in response to your correspondence dated November 12, 2004 regarding the Complaint filed in the above-referenced matter. As demonstrated below, the Complaint wholly fails to state a cause of action necessitating any further action by the Commission. Consequently, I respectfully submit that the Commission should decline to take any further action regarding this matter.

At its core, the Complaint in this matter contains two allegations. First, it alleges "upon information and belief," that a conglomeration of numerous Illinois state and local political organizations and party committees, as well as several individuals, engaged in a "money laundering scheme" to funnel funds from Friends of Dan Hynes to the Campaign. (Compl. at ¶ 19.) Second, it alleges, "upon information and belief," that the Campaign violated federal election law by accepting contributions of \$1,000 from a variety of state and local political organizations and party committees and indirectly receiving contributions from prohibited sources. (Compl. at ¶ 23.) For the reasons set forth below, both allegations are patently and demonstrably false, and in fact may rise to the level of an abuse of the FEC complaint process for political purposes. In any event, it is clear at a minimum that the Commission should take no further action in this matter.

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*Quinlan & Carroll, LTD.*

30 North LaSalle Street • Suite 2900 • Chicago, Illinois 60602  
312.263.0900 phone • 312.263.5013 fax • [www.qclaw.com](http://www.qclaw.com)

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**The Complaint Fails to Identify Citizens for Hynes As A Respondent.**

As a preliminary matter, the Commission should take no further action with respect to Citizens for Hynes because the Complaint fails to identify Citizens for Hynes as a respondent. Citizens for Hynes was not listed as a respondent in the case caption. Furthermore, the Complainant did not designate Citizens for Hynes as a respondent in its identification and recitation of each of the respondents to the Complaint. (See Compl. at ¶¶ 3 – 17.) The Complaint is completely devoid of *any* allegations of wrongdoing with regards to Citizens for Hynes. Finally, in the prayer for relief, the Complaint only requests that the Commission “issue a determination” as to “*each individual and entity above,*” referring only to the specifically designated respondents in the case caption and in paragraphs 3 through 17. (Compl. at p. 7) (emphasis added.) The sole reference to Citizens for Hynes in the Complaint is in a chart constructed by the Complainant on pages five and six of the Complaint, in which Citizens for Hynes is named as a contributor to Hynes for Senate. (Comp. at ¶¶ 19, 23.)

The Complaint should be stricken for the simple reason that it fails to allege any facts to support its claims. Here, Complainant has failed to plead anything with regards to Citizens for Hynes other than a conclusory statement that Citizens for Hynes made a single \$1,000 contribution to Hynes for Senate. The allegations in this Complaint are so deficient in substance and particularity that any prosecution resulting therefrom would constitute a violation the due process rights of Citizens for Hynes. Indeed, perhaps the most essential due process protection is that of adequate notice concerning the actions contemplated. The test of the adequacy of notice is whether it clearly apprises a defendant of the claims to be defended against and whether the defendant, on the basis of the notice given, could anticipate the possible effects of the proceeding. The instant Complaint states no claims to be defended, nor the bases for any so-called claims.

Accordingly, because Complainant failed to identify or designate Citizens for Hynes as a respondent and wholly fails to allege any factual predicates for its conclusory allegations of wrongdoing, this Commission should take no further action against Citizens for Hynes for these reasons alone.

**The Purported Violation of Section 441 of the Federal Election Campaign Act**

However, notwithstanding Complainant's failure to identify Citizens for Hynes as a respondent in any way, the Complaint should be dismissed as to Citizens for Hynes for the additional reason that, even taking Complainant's allegations as true, Citizens for Hynes did not violate any applicable federal campaign law. Complainant alleges, without factual or evidentiary support, that Citizens for Hynes contributed \$1,000 to Hynes for Senate on March 31, 2003 (Compl. at ¶19.) Complainant further alleges that this contribution “comprise[d] a scheme” that violated section 441 of the Federal Election Campaign Act. (*Id*) The second allegation in the Complaint is that a variety

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of local party committees and state political organizations each contributed \$1,000 to the Campaign, and in so doing routed contributions from prohibited sources to the Campaign. However, Complainant makes *no* allegations that Citizens for Hynes participated in any such "scheme." Further, as the attached affidavit demonstrates, the actions of Citizens for Hynes were completely legal and in full compliance with the Act and the Commission's regulations.

Commission regulations and advisory opinions clearly and explicitly allow local party committees and political organizations organized under state law to contribute up to \$1,000 to federal candidates in a year. *See, e.g.,* 11 C.F.R. §§ 102.5(b)(1), 102.5(b)(2); A.O. 1999-4. The only requirement is that the party committee or political organization must "ha[ve] received sufficient funds subject to the limitations and prohibitions of the Act to make such a disbursement." A.O. 1999-4. *See also* 11 C.F.R. §§ 102.5(b)(1), 102.5(b)(2). As the affidavit attached hereto demonstrates, Citizens for Hynes did in fact did have sufficient funds subject to the limitations and prohibitions of the Act to make such a disbursement. Accordingly, this was not, as Complainant alleges, an effort to contribute funds whose ultimate source was "corporations, unions, foreign nationals, federal government contractors and contributors who have already reached federal contribution limits." Indeed, the Complainant offers no evidence whatsoever that any of these contributions originated from a source prohibited from the Act. On the contrary, the uncontroverted evidence clearly shows that the \$1,000 contribution made by Citizens for Hynes to Hynes for Senate was entirely legal. Therefore, it is abundantly clear that no further action on this matter is appropriate.

#### **The Complainant's Abuse of Process**

Finally, I respectfully submit that the Commission should dismiss the Complaint as its filing was a politically motivated abuse of process. The contribution that Complainant calls into question occurred over one year before the filing of the Complaint. However, Complainant, a veteran of this process with close ties to one of Dan Hynes' primary competitors, filed this Complaint just six weeks prior to the primary election in March 2004. This was nothing more than an attempt to attract the attention of the media and to derail the Hynes for Senate campaign. Consequently, Complainant's spurious allegations should not be countenanced by the Commission and the Complaint should be dismissed without further action. The present Complaint was an attempt to further harass the Hynes for Senate campaign in an attempt to gain political advantage. In sum, the Complainant has engaged in a pattern of filing frivolous Complaints, at the direction of one of Mr. Hynes' opponents, and in the closing weeks of the campaign, in an effort to gain political advantage. This is an abuse of the Commission complaint process, and I would urge the Commission to recognize both as such.

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Accordingly, on behalf of Citizens for Hynes, I respectfully request that the Commission take no further action in this matter.

If you require any additional information, please feel free to contact me.

Very truly yours,



Michael T. Beirne

MTB/jw  
Enclosure

**BEFORE THE FEDERAL ELECTION COMMISSION**

GERALD L. JAECKS,

Complainant,

vs.

MUR 5406

DANIEL W. HYNES, HYNES FOR SENATE,  
19<sup>th</sup> WARD DEMOCRATIC ORGANIZATION,  
THOMAS C. HYNES, ROSEMARY BILECKI,  
PETER BILECKI, 43<sup>rd</sup> WARD DEMOCRATIC  
PARTY, PEGGY A. ROTH, CHARLES R.  
BERNARDINI, FRIENDS OF VI DALEY,  
THOMAS S. MOORE, VI DALEY, FRIENDS  
OF DAN HYNES, JOHN SHERIDAN,  
MADISON COUNTY DEMOCRAT CENTRAL  
COMMITTEE, MAC WARFIELD, SANGAMON  
COUNTY DEMOCRATIC CENTRAL  
COMMITTEE, PATRICK T. TIMONEY,  
DONALD E. STEPHENS and DONALD  
E. STEPHENS,

Respondents.

**AFFIDAVIT OF DENNIS KASPER**

I, Dennis Kasper, certify that I have personal knowledge of the matters contained in my affidavit, that they are true and accurate, and that I could competently testify thereto if called as a witness at trial:

1. I am familiar with the allegations asserted in Case MUR 5406.
2. I am the Chairman of Citizens for Hynes.
3. Citizens for Hynes contributed \$1,000 to Hynes for Senate Exploratory Committee, a federal authorized committee, on or about March 31, 2003. Citizens for Hynes did not contribute any other funds to any federal candidate in 2003.
4. At the time of that contribution, Citizens for Hynes had received sufficient funds

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subject to the limitations and prohibitions of the Federal Election Campaign Act and the requirements of 11 C.F.R. § 300.31 to make such a contribution, as required by 11 C.F.R. § 102.5(b)(2)(ii).

5. Accordingly, the actions of Citizens for Hynes were completely legal and in full compliance with the Federal Election Campaign Act and the Federal Election Commission's regulations.

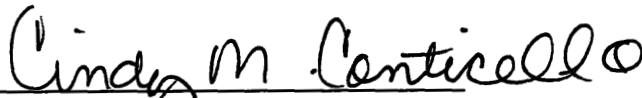
FURTHER AFFIANT SAYETH NOT.

Dated this 17th day of January, 2005.

  
DENNIS KASPER

SWORN and SUBSCRIBED to before

me this 18<sup>th</sup> day of January, 2005.

  
NOTARY PUBLIC

